

III. REMARKS

Claims 1 and 3-8 are pending in this application. By this amendment, claims 1, 7 and 8 have been amended. Applicants do not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, claims 1 and 3-6 are rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. Claim 7 is rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. Claims 1 and 7-8 are rejected under 35 U.S.C. §103(a) as allegedly being anticipated by Dutta *et al.* (U.S. Patent No. 6,546,423 B1), hereafter “Dutta” in view of Fielding *et al.* (Fielding, RFC 2616), hereafter “Fielding.” Claim 2 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Dutta in view of Fielding and further in view of Starnes *et al.* (U.S. Patent No. 6,510,469 B1), hereafter “Starnes.” Claim 3 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Dutta in view of Fielding and Starnes and further in view of Pavan (U.S. Patent No. 6,801,943 B1), hereafter “Pavan.” Claim 4 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Dutta in view of Fielding, Starnes and Pavan and further in view of Millard (U.S. Patent Pub. No. 2002/0087282 A1), hereafter “Millard,” and further in view of Subramanian *et al.* (U.S. Patent Pub. No. 2002/0194211 A1). Claim 5 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Dutta in view of Fielding, Starnes, Pavan, Millard and Subramanian and further in view of Colby *et al.* (U.S. Patent No. 6,625,643 B1).

A. REJECTION OF CLAIMS 1 AND 3-6 UNDER 35 U.S.C. §112, FIRST PARAGRAPH

The Office has indicated that claims 1 and 3-6 are indefinite for failing to satisfy the written description requirement. Applicants respectfully submit that the optional nature of the filter is described on page 4, line 9 of the original specification. In the interest of expedited prosecution, Applicants have amended the claim to remove the determining. Accordingly, Applicants request withdrawal of the rejection by the Office.

B. REJECTION OF CLAIM 7 UNDER 35 U.S.C. §101

The Office has indicated that claims 7 is directed to non-statutory subject matter. In particular, the Office states that the system claim contains no hardware elements. Applicants have amended the claim to include a computer device. Applicants respectfully submit that the claim meets the Office's interpretation of statutory subject matter. Accordingly, Applicants request withdrawal of the rejection by the Office.

C. REJECTION OF CLAIMS 1, 7 AND 8 UNDER 35 U.S.C. §103(a)

With regard to the 35 U.S.C. §103(a) rejection of claims 1, 7 and 8 over Dutta and Fielding, Applicants assert that the references cited by the Office fail to teach or suggest each and every feature of the claimed invention. For example, with respect to independent claims 1, 7 and 8, Applicants submit that the cited references fail to teach or suggest, *inter alia*, that every server out of said plurality of individual servers is adapted to issue issuing load balancing instructions to said NCS by passing said load balancing instructions *directly* to said NCS in a NCS-control HTTP header. In contrast, the passage of Dutta cited by the Office recites:

One method in accordance with an embodiment of the present invention for dynamically changing a load balancing rule includes sending a packet *received at the firewall* to the load balancing proxy. Col. 5, lines 14-21.

To this extent, the interactions in Dutta occur through and are facilitated *by a firewall*, and are *not direct from the server to the load balancing proxy*. Furthermore, the section of Dutta quoted by the Office in the Office Action does not contradict the above passage, but rather, only states that the message is sent to the firewall and that the load balancing proxy determines a new rule. Read in conjunction with the above passage of Dutta, it is clear that the sending of the packet from the firewall to the load balancing proxy is performed in between the sending of the message from to the firewall and the determination of the new rule by the load balancing proxy. To this extent, Dutta never equates the firewall with the load balancing proxy and, rather, always discloses, either directly as above or implicitly that the two are separate. As such, Dutta never teaches or suggests that the server sends its message directly to the load balancing proxy. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

With further respect to independent claims 1, 7 and 8, Applicants submit that the cited references fail to teach or suggest, *inter alia*, that the any one server is adapted to issue the load balancing instructions that apply to a designated server that is designated by the any one server, the designated server being any of the plurality of individual servers. In contrast, the passage of Dutta cited by the Office states only that a server can send a message to the firewall to direct the traffic being sent to another server, and that the firewall can then choose to direct the traffic to Server B. However, Dutta does not specifically teach that Server B is designated by the server sending the message. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

D. OTHER REJECTIONS OF CLAIMS UNDER 35 U.S.C. §103(a)

With regard to the 35 U.S.C. §103(a) rejection of claims 3-6 over Dutta in view of Fielding and Pavan, Applicants continue to assert that there is no motivation or suggestion to combine the Dutta and Pavan references. Specifically, Dutta performs load balancing, that is, performing some analysis on a packet of information received from a remote location and forwarding the packet to a selected server out of a number of servers for processing. Col. 1, lines 15-18. To this extent, the purpose of Dutta is correctly distributing packets among the servers. In contrast, Pavan discloses a network scheduler that schedules the use of a single shared resource such as a physical communication channel. Col. 4, lines 5-10. To this extent, while Dutta distributes a single packet among multiple servers, Pavan coordinates multiple communications on a single channel. As such, Pavan is in a field of art that is non-analogous to that of Dutta. Furthermore, as the goal of Pavan is correctly scheduling an order of task performance on a single resource, it does not solve the same problem as Dutta, i.e. to balance multiple resources. Thus, there is no motivation in the references themselves or in the art for combining the references. Accordingly, Applicants submit that the Office has failed to prove a *prima facie case* of obviousness and request that the Office's rejection be withdrawn.

With respect to claim 5, Applicants respectfully submit that the cited references fail to teach or suggest a share directive aimed at enabling a sharing of information from a particular source that is external to a network that includes the plurality of individual servers and the NCS within all members of said plurality of individual servers and said NCS by depositing an HTTP header in the NCS that is added to all subsequent requests having a matching filter that corresponds to the source that are issued from the NCS to any server. Specifically, to the extent

that the cited references teach a share directive, they do not teach or suggest that it enables sharing of information from an external source that is based on the source of the information. Furthermore, the cited references do not teach or suggest that this information is distinguished from other information using a filter that corresponds to a source that is external to a network that includes the plurality of individual servers and the NCS.

Furthermore, with respect to newly amended claim 6, Applicants respectfully submit that the cited references fail to teach or suggest a lock directive aimed at locking resources identified by said filter to prevent service of the resources from being performed by any of the plurality of individual servers. Specifically, to the extent that the cited references may teach or suggest a lock directive, the lock directive is not aimed at locking resources identified by a filter that, as defined in claim 5, is based on a source that is external to a network that includes the plurality of individual servers and the NCS to prevent service of resources by any server. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

With regard to the Office's other arguments regarding dependent claims, Applicants herein incorporate the arguments presented above with respect to independent claims listed above. In addition, Applicants submit that all dependant claims are allowable based on their own distinct features. However, for brevity, Applicants will forego addressing each of these rejections individually, but reserves the right to do so should it become necessary. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

IV. CONCLUSION

In addition to the above arguments, Applicants submit that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicants do not acquiesce to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicants do not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicants reserve the right to present such arguments in a later response should one be necessary.

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

Date: February 17, 2009

/Hunter E. Webb/

Hunter E. Webb

Reg. No.: 54,593

Hoffman Warnick LLC
75 State Street, 14th Floor
Albany, New York 12207
(518) 449-0044
(518) 449-0047 (fax)